UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/AC.96/887
9 September 1997

Original: ENGLISH

EXECUTIVE COMMITTEE OF THE
HIGH COMMISSIONER'S PROGRAMME

Forty-eighth session

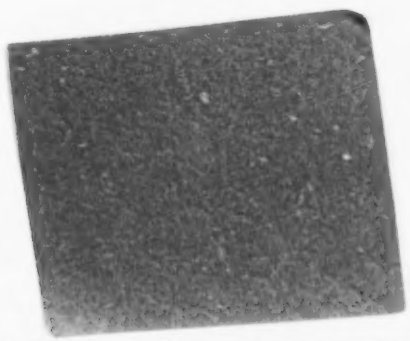
ANNUAL THEME: REPATRIATION CHALLENGES

I. INTRODUCTION

1. While in the period from 1985 to 1990 an estimated 1.2 million refugees returned to their home countries, in the following five years the number rose to 9 million. In 1996 alone, around 2 million refugees repatriated, the principal destinations being Rwanda, Afghanistan, Burundi, Iraq, Togo, Myanmar, Ethiopia and Bosnia and Herzegovina. In the same year, the Office was assisting some 3.3 million returnees in the early stages of reintegration. Over the past decade, UNHCR has devoted a far greater proportion of its budget to repatriation operations and returnee assistance, with expenditure accounting for at least 14 per cent of total spending since 1991, in contrast to an annual average of below 2 per cent before 1985.

2. Any increased incidence of voluntary repatriation is a positive development. Voluntary repatriation is the preferred solution to refugee problems. Where people are able to reintegrate viably and safely into their countries and communities of origin, repatriation not only benefits returnees themselves, but can also facilitate economic reconstruction and reconciliation in war-torn societies.

3. In recent years, however, the repatriation of refugees and asylum-seekers has increasingly taken place in volatile or unstable environments following, or even during, conflict. Moreover, repatriation has frequently involved various forms of pressure or duress. These range from forcible return to places where the lives of refugees are endangered or where their safety cannot be guaranteed, to flight or evacuation from situations of insecurity in countries of asylum, to return of persons who do not, or are perceived not to require international protection.



GE.97-02700

4. In recognition of the complexity of the issues and dilemmas facing UNHCR and the international community, it was decided by the Standing Committee in June 1997 that "Repatriation Challenges" would be the annual theme for the forty-eighth session of the Executive Committee. It was further agreed that the Executive Committee debate should be conducted on the basis of work undertaken in the Standing Committee, notably the Note on International Protection (A/AC.96/882), as well as other documentation related to protection aspects of repatriation and return.[1]

5. The present document briefly outlines the challenges and dilemmas experienced in recent instances of repatriation, and examines some of the shortcomings in current UNHCR and multilateral approaches to monitoring and reintegration. Rather than providing policy prescriptions, it seeks to furnish a general framework for the Executive Committee debate which, in turn, will allow the Office to develop further policies and operational approaches.

II. CURRENT REPATRIATION CHALLENGES

A. Repatriation under pressure or duress

6. The scale and character of recent repatriation movements and the fragile nature of the societies to which people return have raised a number of far-reaching protection and assistance challenges. In some cases political, economic or security concerns in countries of refuge have jeopardized asylum. In others, conditions in countries of origin have posed a variety of obstacles to secure, effective and sustainable reintegration. Moreover, cross-border movements have become more diverse and complex in recent years. Refugees in flight from persecution, human rights abuses and conflict, may be mixed with migrants, military personnel, war criminals or others not qualifying for international protection.

7. Despite a well-established international principle that refugee repatriation should take place on a voluntary basis and in conditions of safety and dignity, a large proportion of the world's recent returnees have repatriated under some form of duress, many of them in conditions that were neither fully safe nor dignified. In various parts of the world, pressures to find bilateral solutions to refugee problems have increased. Threats to asylum have multiplied and refugees are viewed increasingly as a burden and a potential threat to national security and stability. In a number of cases, borders have been closed and refugees forcibly returned. This may occur notwithstanding the lack of any fundamental change in conditions which provoked the refugees' original flight, or despite dangerous or insecure conditions prevailing in their homeland.

8. In other situations, return may be triggered by a more general deterioration of conditions in countries of asylum, whether as a result of violence, general instability or reductions in international assistance. In such situations the borderline between voluntariness and compulsion may be difficult to establish in practice. In extreme cases, repatriation emergencies may result when large numbers of refugees feel compelled or are constrained to leave their country of asylum and return to areas of their homelands which are ill-prepared to receive them.

9. Where return takes place under different kinds of pressure or duress, UNHCR may in some cases have no choice but to resort to the best available means of ensuring the safety of those concerned. These may fall short of

---

[1] Standing Committee and other relevant documentation is listed in the Annex to this paper.

internationally accepted principles. In recent months, the repatriation challenges faced by UNHCR in the Great Lakes region of Africa have been unprecedented. The return of some 60,000 Rwandan refugees from the Democratic Republic of the Congo not only posed major operational difficulties, but also gave rise to fundamental dilemmas which reflected the need to chose among options that severely limited the scope for effective protection.

10. By no means all refugees who repatriate to situations of insecurity do so as a result of the kinds of pressures described above. For a variety of reasons, refugees may feel that it is in their best interests to repatriate, even if conditions are not completely safe at home. Afghanistan provides an example of a country to which many refugees have returned despite ongoing conflict. Indeed in situations such as those prevailing in Afghanistan or Bosnia and Herzegovina, where return may be safe in some areas but not in others, a differentiated approach to repatriation may be required.

11. Except where a fundamental change in the situation in the country of origin of refugees has removed the need for international protection, the first challenge for UNHCR and the international community is ensure the availability of safe asylum and to prevent situations of repatriation under pressure or duress. UNHCR's 1997 *Note on International Protection* examines in more detail the challenges faced in safeguarding the institution of asylum and explores a number of fundamental requirements in this respect. These include international solidarity and burden-sharing; effective measures to ensure that refugees are admitted, identified and separated from armed elements; locating camps at a safe distance from borders; and ensuring rapid and secure access by UNHCR and other relevant humanitarian organizations to persons of concern.[2] However, when circumstance in the country of asylum nevertheless oblige refugees to return to insecure situations in their homelands, a different set of challenges emerge. These need to be addressed without detriment to efforts to reinforce the availability of asylum.

- What measures can be taken to ensure that asylum is preserved and international obligations of States to protect refugees are respected?

- What more can be done to offset the impact of refugee populations on countries of asylum?[3]

- How can the security concerns of countries of asylum be more effectively addressed?

- What additional measures can be taken to ensure the physical protection and safety of refugees in countries of asylum?

- How can UNHCR best address the plight of refugees faced with little choice but to return, without undermining the essential principle of *non-refoulement*?

- Under what conditions should UNHCR involve itself in return to situations where effective national protection cannot be fully ensured and when should it not be so involved?

---

[2] See *Note on International Protection* (A/AC.96/882) issued to the Standing Committee in June 1997 under the symbol EC/47/SC/CRP.26.

[3] See *Social and Economic Impact of Large Refugee Populations on Host Developing Countries* (EC/47/SC/CRP.7) submitted to the January 1997 meeting of the Standing Committee.

B. Repatriation of persons not in need, or no longer in need of international protection

12. While voluntary repatriation to situations where returnees enjoy effective national protection is not controversial and the role of UNHCR is clear, certain dilemmas may, nevertheless, emerge for UNHCR and for States. Conditions in the country of origin may, for example, be conducive to return, but refugees may be reluctant to go home for non-refugee related reasons. In this context there has been renewed discussion of the use of the cessation clauses of the 1951 Convention.[4] Ensuring the return of those no longer in need of international protection is perceived as an important element in maintaining the availability of asylum for those who need it.

13. Similarly, the return of rejected asylum seekers poses problems to many States and their continued presence in receiving countries may also have negative consequences for asylum. Debate has intensified on the extent to which UNHCR can play a useful role, on a "good offices" basis, in assisting Governments to return certain groups of rejected asylum-seekers to their countries of origin.[5]

- What additional measures can be taken to facilitate the return of persons not in need of international protection or who no longer require such protection?

C. Repatriation in the aftermath of conflict

14. Where repatriation is large-scale and particularly when it takes place precipitously or under pressure, it can have a significant impact on the process of peace-building and especially on reconciliation. Effective reintegration is clearly critical for successful peace-building, and in order to avert renewed forced displacement. Yet reintegration requires that a State is willing and able to extend national protection to its citizens. In the aftermath of conflict, this may call for substantial multilateral efforts to promote the reconstruction of economic and social services and resources; rebuild, reform or strengthen political and legal structures; and facilitate reconciliation between war-affected populations.

15. Traditionally, UNHCR's presence and activities in countries of origin have been limited in scope and in time. However, the exploration of new approaches has been necessary where repatriation occurs during internal conflict or in the transition from war to peace, particularly when the fundamental causes of flight have not been resolved.

16. Amongst the harsh realities faced by many returnees are fragile security, the presence of landmines, inadequate judicial processes, threats to governmental authority from rebel groups and the destruction of economic, social and legal infrastructures. Large-scale forced displacement is, moreover, often from politically and economically weak States, where the Government has been unable to protect its citizens from armed conflict or generalized violence. The damage caused by conflict tends to increase the obstacles to national protection, with the state's capacity to protect returnees often weaker in the aftermath of conflict than prior to flight. Special attention thus needs to be given to the ways in which multilateral

---

[4] A conference room paper on the cessation clauses (EC/47/SC/CRP.30) was considered by the June 1997 meeting of the Standing Committee.

[5] A conference room paper on the *Return of persons not in need of International Protection* (EC/47/SC/CRP.28) was also considered by the June 1997 meeting of the Standing Committee.

actors can promote effective national protection and help compensate for deficiencies in such protection under highly unstable conditions.

17. The greater the complexity of any actual or potential repatriation, the greater is the need for UNHCR to have a presence on the ground, to have unhindered access to all refugees and returnees, and to have at its disposal the information and resources required for effective and prompt response. Donor Governments have generously supported large-scale, high-profile repatriation operations once they have commenced. Support has been more difficult to secure, however, when preparations for repatriation, albeit tentative and contingent on positive developments in the countries of origin, need to be made against a background of political uncertainty as, for example, in Angola, Eritrea, Liberia and, more recently, Sierra Leone.

- How can repatriation be managed in such a way as to support wider peace-building processes?

- How can preparedness for repatriation operations be best ensured?

D. Reintegration, rehabilitation and reconstruction

18. A positive aspect of UNHCR's reintegration activities is undoubtedly their focus, through quick impact and other projects, on the "grass roots" level and on returnees and their communities as primary actors in their own reintegration. An emphasis on community level capacity-building and the promotion of indigenous coping mechanisms and individual self-reliance should remain at the core of UNHCR's reintegration efforts.

19. Nevertheless, broader economic, social and legal reconstruction is critical for the effective reintegration of returnees. States emerging from civil conflict require the resources to meet the security and material needs of displaced persons and returnees; rebuild damaged infrastructures and community services; and address the problem of land rendered unusable by landmines and other weapons of war. In the case of weak States, it requires the creation or rebuilding of political institutions, administrative structures and police and judiciary systems.

20. Experience in many recent reintegration operations suggests that current approaches by UNHCR and its multilateral partners may not in themselves be adequate means of achieving successful and sustainable reintegration. UNHCR's "hand-over" of initial rehabilitation projects has not been free from problems. Most rehabilitation activities currently take the form of quick impact projects (QIPs). QIPs were initiated in the early 1990s, in order to fill the gap between relief activities and longer-term development. They represented a stage on the so-called "continuum" from relief to development which foresaw a seamless web of multilateral activities.

21. In practice, this approach has sometimes resulted in a disjuncture between the activities of UNHCR and its partners. UNHCR's initial rehabilitation activities have not always laid the groundwork for sustainable reintegration. In many cases there has been a lack of adequate longer-term planning and needs assessment amongst recipient populations, and a greater focus on inputs than on impact. Even where projects are well-tailored to local needs, local communities, Governments and NGOs may not have access to the necessary resources or skills to sustain projects. Furthermore, QIPS have focused on assistance rather than on the protection needs of returnees.

22. In large-scale repatriation, UNHCR may be obliged to meet the needs of returnee communities with the minimum of delay, making it difficult to

incorporate longer-term considerations into the design and implementation of projects. There is often an inherent tension between speed in response to immediate needs and sustainability. Nonetheless, there may be scope for UNHCR to enhance its contribution to the sustainability of reintegration through improved planning and stronger linkages with key partners. In this context, UNHCR has made efforts to systematize its relations with development and human rights actors. The new Framework for Cooperation concluded with UNDP, collaboration with the World Bank in developing new approaches to post conflict reconstruction and Memoranda of Understanding concluded with Human Rights field operations are examples of action taken in this respect, as are exchanges of letters covering cooperation between UNHCR and the International War Crimes Tribunals for the former Yugoslavia and Rwanda.

23. Nevertheless, UNHCR's priorities do not always coincide with those of other agencies. While returnees are often the most marginalized groups, development and financial actors may choose to target populations and areas with more development potential, or to channel assistance through central Government rather than local structures and communities. This divergence of priorities is not necessarily negative. The emphasis should be on balancing complementary priorities within a shared framework for policy planning and implementation. In this respect, the emphasis placed by the Secretary-General on the development of a coherent, system-wide United Nations' strategy at the country level is welcomed by UNHCR as an important factor in securing sustainable repatriation solutions.

- How can UNHCR and multilateral agencies better utilize local capacities and resources in the planning and implementation of reconstruction activities?

- What more can be done to increase the involvement of development actors at an early stage of reintegration?

- How can UNHCR further develop and reinforce linkages with other multilateral actors and NGOs to ensure complementarity and an effective division of labour?

- What role should UNHCR play in supporting activities to strengthen state capacity?

- What approach should UNHCR take to the time-frame for its involvement in reintegration activities?

- How can the phase-out of UNHCR and other humanitarian actors be best managed from the point of view of sustainability?

F. Reconciliation

24. Effective reintegration also involves promoting reconciliation between parties to the conflict, or, at the minimum, ensuring their peaceful co-existence and providing a safe environment for people to be able to invest in rebuilding social relations. Reconciliation requires a number of components, including consensus-building on notions of responsibility and justice, with, where appropriate, international tribunals, truth commissions or other mechanisms for implementing justice. It may also involve the promotion of human rights and minority rights through monitoring, legislative reform and education, or more specific interventions to resolve problems relating, for example, to the legal status or property rights of returnees.

25. While UNHCR's protection activities in countries of origin have traditionally been based on the monitoring of guarantees and amnesties, there has, more recently, been an emphasis on monitoring a broader set of human rights depending on specific problems in the country of origin. In this context, UNHCR and other agencies increasingly engaged in activities to strengthen the capacity of central and local government. One important element of this is legal and judicial capacity-building. As the Executive Committee concluded in 1995, "...for States to fulfil their humanitarian responsibilities in ...reintegrating returning refugees, ...an effective human rights regime is essential, including institutions which sustain the rule of law, justice and accountability"[6]. Such activities have been undertaken in areas of central and southern Africa, Central Asia and Central America.

26. Innovative approaches to the promotion of reconciliation need to be further explored. In Bosnia and Herzegovina, UNHCR has, for example, sought to ensure appropriate linkages between repatriation, reconstruction and reconciliation through the promotion of "open cities", the idea being that favourable consideration for reconstruction assistance is given to communities that demonstrate their willingness to reintegrate returnees from minority groups. In Bosnia and Herzegovina and Rwanda, the Office has also sought to promote the role of women in reconciliation.

27. UNHCR and its multilateral partners need to continue their efforts to better define and concert their respective roles in the range of activities which may be required to promote reconciliation. Activities may include support for the establishment of special tribunals, disarmament and demilitarization, the promotion of indigenous mechanisms for conflict-resolution, and inter-community projects which cut across the lines of conflict. While UNHCR may not be a the main actor in many of these activities, it has a strong interest in their being effectively addressed.

28. In recognition of the natural complementarity between refugee protection and United Nations human rights operations, particularly in the field, UNHCR has been working closely with the High Commissioner for Human Rights in a number of field operations. Similarly, UNHCR's efforts on behalf of refugees can only be enhanced by the active and effective functioning of the International Criminal Tribunals, for example in the Great Lakes region of Africa, where accountability and exclusion remain key considerations.

- How can rehabilitation activities best support the process of reconciliation?

- What is the potential of positive conditionality, such as the "open cities" initiative in the former Yugoslavia, in promoting reconciliation?

- What measures can be taken to promote the effective restoration or establishment of national protection and what are the limits of UNHCR's role in this respect?

---

[6] A/AC.96/860, para. 19(i).

RELATED DOCUMENTATION

A. Standing Committee and Executive Committee

1996

EC/46/SC/CRP.16	Follow-Up to ECOSOC Resolution 1995/56: UNHCR Assistance Activities in Countries of Origin
EC/46/SC/CRP.17	UNHCR's Protection Role in Countries of Origin
EC/46/SC/CRP.31	UNHCR's Role in National Legal and Judicial Capacity-Building
EC/46/SC/CRP.36 and Corr.1	Return of Persons not in need of International Protection
A/AC.96/863	Note on International Protection
A/AC.96/872	Annual Theme: the Pursuit and Implementation of Solutions

1997

EC/47/SC/CRP.7 and Corr.1	Social and Economic Impact of Large Refugee Populations on Host Developing Countries
EC/47/SC/CRP.11	Lessons Learnt from the Burundi and Rwanda Emergencies: Conclusions of an Internal Review Process
EC/47/SC/CRP.26[7]	Note on International Protection
EC/47/SC/CRP.27	Progress Report on Informal Consultations on the Provision of International Protection for all who need it
EC/47/SC/CRP.28	Return of persons not in need of International Protection
EC/47/SC/CRP.29	Note on the Exclusion Clauses
EC/47/SC/CRP.30	Note on the Cessation Clauses
A/AC.96/888	Report of the Eighth Meeting of the Standing Committee (June 1997)

B. Miscellaneous

Handbook on Voluntary Repatriation

---

[7] Reissued to the forty-eighth session of the Executive Committee as A/AC.96/882.